

**MnDOT Office of Environmental Stewardship**  
**Environmental Investigation Unit**

**Property Acquisition: Contaminated Property**  
**Review Process**

**Contact Information:**

Environmental Investigation Unit

[Brian Kamnikar](#) 651-366-3617

The intent of this guidance document is to provide general procedural information for Minnesota Department of Transportation (MnDOT) personnel or contractors working on acquisition of property. Any deviation from procedures contained in this document must be discussed with Environmental Investigation Unit (EIU) personnel prior to implementation.

This document should not be construed as a full description of all regulations pertaining to the subject matter. Contact the EIU in the MnDOT Office of Environmental Stewardship (OES) for additional information or legal requirements.

**Background**

MnDOT incurs liability when acquiring properties that have soil or groundwater contamination. To avoid or reduce this liability, it is important that certain actions are taken prior to property acquisition. The Environmental Investigation Unit (EIU) can assist District personnel in assessing contaminated property liability and recommending the appropriate course of action. It is important that communication occur between District Land Management and EIU personnel to ensure that adequate review of properties is conducted before a decision to make an acquisition is made.

**Property Acquisition**

Property acquisitions include right of way acquired through the following actions:

Note: Includes both permanent and temporary takings.

- Total takes
- Excess and surplus property takes
- Acquisition through Commissioner's Orders
- Conveyance to MnDOT (e.g., acquisition through rail bank program, acquisition from City or County on partnership projects)
- Temporary and permanent easements
- Transfer of custodial control
- Any other acquisition action

Any of these acquisitions can result in MnDOT being associated with a property with soil or groundwater contamination. By becoming the property owner or being named on

an easement, MnDOT can be held as a responsible party for cleaning up contamination and/or subject to third party lawsuits relative to contamination issues. Once MnDOT incurs liability due to ownership, it can never be released from that liability, even by selling the property.

At a minimum, acquisitions of the following types of properties should be reviewed by EIU prior to a decision to make an acquisition (including easements):

- Properties in developed areas.
- Properties with existing or previous commercial or industrial businesses.
- Properties exhibiting any of the following conditions:
  - Evidence of dumping (waste abandoned on surface or buried at the site).
  - Known or suspected fill materials of unknown origin or quality placed on the property.
  - Aboveground or underground storage tanks.
  - Vent pipes (may indicate presence of underground storage tanks).
  - Groundwater monitoring wells
  - Onsite chemical use (e.g., vehicle maintenance, manufacturing or industrial operations, dry cleaning, parts washing, paint spraying, wood treatment, etc.).
  - Chemical/waste containers, storage rooms, or sheds.
  - Outdoor storage yards.
  - Subgrade features with the potential to leak (e.g., hydraulic hoists, flammable waste traps – oil/water separators, vaults, pits, or vats).
  - Stained soil or stained floors with large cracks.
  - Dead vegetation.

### **Contaminated Property Review Process**

The following procedure defines the Contaminated Property Review process for proposed property acquisitions:

1. District Planning and Budgeting
  - District identifies anticipated property acquisitions and prioritizes properties to be reviewed by EIU.
  - EIU provides a cost estimate to the district for completing a Contaminated Property Review for the project. District approves and secures funding for EIU to retain a consultant to complete the estimated number of Contaminated Property Reviews (see item 3 below) per fiscal year.
2. District Notification to EIU of the Need for a Contaminated Property Review
  - District notifies EIU of suspect contaminated properties requiring review as soon as the district has made a decision that the property must be acquired based on the current project design.
  - District immediately notifies EIU if suspect contamination problem (see list of conditions in Property Acquisition section on page 1) is identified at any time during the appraisal process.

3. Contaminated Property Review
  - EIU, or a consultant contracted by EIU, reviews the Minnesota Pollution Control Agency (MPCA) databases to check for known contaminated sites in the parcel area. The databases searched included: leaking underground storage tank facilities, landfills, salvage yards, voluntary investigation and cleanup (VIC) sites, Superfund sites and dump sites. A review of these MPCA files is a component of a Phase I Environmental Site Assessment (Phase I ESA). The review may also include: historical photographs or topographic maps, MnDOT project files, and parcel files. After completing the review, EIU determines whether a more thorough review of property history, a Phase I ESA, is necessary.
  - EIU and district determine when the Phase I ESA needs to be completed.
  
4. Detailed Property Review
  - EIU sends requisition to District for approval and to secure funding to retain a consultant to perform a Phase I ESA. ).
  - Consultant completes a Phase I ESA. This more detailed review includes at least two additional components: research on historic land use (e.g. review of City and County building and environmental records; interviews with previous property owners), and site reconnaissance. Phase I ESAs generally cost \$5,000 to \$10,000 per parcel, depending on the complexity of the property history.
  
5. EIU Recommendations to District

Possible recommendations based on the results of the Phase I ESA are as follows:

  - EIU recommends that MnDOT acquire the property without additional environmental investigation.
  - EIU recommends that MnDOT not acquire the property.
  - EIU recommends that MnDOT limit the area being acquired.
  - EIU recommends that MnDOT complete a drilling investigation to collect soil and/or groundwater samples from the property in order to determine if contamination is present, and what the magnitude and extent of the contamination is on the site.
  
6. Drilling Investigation
  - EIU provides District with estimated investigation cost.
  - EIU sends requisition to District for approval and to secure funding to retain a consultant to perform a drilling investigation at the property (i.e., obtain soil and/or groundwater samples).
  - Consultant completes the investigation and prepares a Drilling Investigation Report.
  - EIU submits the report to the MPCA to obtain letters of assurance to reduce MnDOT's liability, approvals, and/or site closure, as appropriate.
  - EIU notifies the District if the drilling investigation results identify the need to complete cleanup of soil and/or groundwater contamination during construction and how to manage contaminated materials.

7. Property Cleanup

- EIU provides District with special provisions for management of contaminated materials during construction.
- EIU sends requisition to District for approval and to secure funding to retain a consultant to monitor and document management of contaminated materials during construction, and to prepare a documentation report.
- EIU submits the construction documentation report to the MPCA to obtain liability assurances, approvals, and/or site closure, as appropriate.

Please contact the [Environmental Investigation Unit](#) for further assistance.

jmk2018